IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT, CHANDIGARH

Crl. Misc. No. : 26114-M of 2007 (O & M)

Date of decision: 23.08.2007.

Bhagwani Devi & anr.

..... Petitioners

Versus

State of Haryana & Ors

..... Respondents

Present : Mr. Rajesh Khandelwal, Advocate
for the petitioners.

Mr. Vikas Chaudhary, AAG, Haryana.

S.S. SARON, J.

This petition was initially filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure ("Cr.P.C." - for short). It was registered as a Criminal Writ Petition. Thereafter, a Division Bench of this Court on the request of the counsel for the petitioners, vide order dated 24.04.2007 ordered that this petition be treated as a petition under Section 482 Cr.P.C. Accordingly, it was treated as a Criminal Miscellaneous petition and a copy of the petition was given to the State Counsel to seek instructions. Written statement in the case has been filed by the Deputy Superintendent of Police on behalf of Respondents No.1 to 4.

The petitioners have prayed for registering FIR for the offences under Sections 302, 201 and 34 Indian Penal Code ("IPC" - for short) and for quashing FIR No.145 dated 24.7.2006 registered for the offences under Sections 279 and 304-A IPC at Police Station Adampur, District Hisar. An alternative prayer has been made that investigation in the case be conducted by the CBI/Crime Branch or any other independent Agency. A further prayer has been made for directing the respondents to implement Section 154 Cr.P.C.

It is stated that the sons of the petitioners No.1 and 2 respectively namely Devender son of Ran Singh and Rajesh son of Mehar Singh have been killed by respondents No.5 to 8 on 23.07.2006. In respect of the said incident, investigations were conducted by Assistant Sub-Inspector Shri Gopi Chand (Respondent No.4). He, it is alleged, did not act in an impartial manner and favoured respondents No.5 to 8 by taking huge amount of money from them. The signatures of the complainant Udeybir, it is alleged, were taken on blank papers and the present case which is a murder case was converted into an accident case. Therefore, instead of registration of a case under Sections 302, 201/34 IPC, a false, frivolous, illegal and favourable FIR NO. 145 dated 24.07.2006 has been registered alleging the commission of offences under Sections 279 and 304-A IPC to favour respondents No. 5 to 8. It is submitted that in the FIR, cause of death has been shown to be due to reversing of the dumper vehicle No.HR-39B-4466. The sons of the respective petitioners were lying on the ground and the vehicle,

was run over the heads of their sons. The petitioners approached the Superintendent of Police, Distt. Hisar, (respondent No.3) on many occasions but, he did not give proper response. Thereafter, Director General of Police, Haryana (respondent No.2) was approached and the matter was further investigated by a subordinate Officer of the Superintendent of Police, Hisar (respondent No.3) and again the case was made out to be a case of an accident instead of murder. It was held that there was no prior enmity or ill-will between the sons of the petitioners and respondents No.5 to 8. It is submitted that the MLRs annexed as Annexure P-4 and Annexure P-5 were not taken into consideration and there was no proper inspection of the place of occurrence, where the sons of the petitioners were killed. Moreover, in the investigations conducted by respondent No.4, one Rajbir son of Hawa Singh was shown driver of the vehicle, whereas he was not so. Further investigations were also conducted by D.S.P. City Hisar and one Gobinda (Respondent No.8) has been shown to be the driver of the vehicle. In this manner, it is alleged, that the police is suppressing the truth and not bringing the true facts/reality to light for extraneous considerations. Therefore, the petitioners assail the impugned FIR No.145 dated 24.07.2006 (Annexure P-1) and also the inquiry report dated 23.01.2007 (Annexure P-2). It is submitted that reason for killing the sons of the petitioners by respondents No.5 to 8 is that they (respondents No.5 to 8) had brought a girl on 23.07.2006 at night for enjoying themselves. The deceased were not interested and they tried

to stop respondents No.5 to 8 because they were living in the same room. Therefore, even though the sons of the petitioners were murdered, the case has been converted into one of an accident. Even the girl who was taken by respondents No.5 to 8 is not being traced by the Police. The Police has investigated the case about four times but in none of the investigations that have been conducted by the lower or higher Officers, the Medico Legal Reports of the deceased have been taken into consideration nor any opinion of the Doctor been sought by the Police. It is submitted that the real culprits are roaming about freely whereas respondents No.5 to 8 are being helped by the Police.

Reply has been filed by the Deputy Superintendent of Police, Hisar on behalf of respondents No.1 to 4. It is stated that the statement of Udeybir Singh son of Rattan Singh was recorded. It was alleged by him that Rajbir son of Hawa Singh, while driving the dumper in a rash and negligent manner crushed his nephew Devender and also Rajesh, who were sleeping on the ground under the dumper. After registration of the case, investigations were conducted by ASI Gopi Chand Police Station Adampur. He recorded the statement of witnesses. Later on the investigation of the case was entrusted to Inspector Baljit Singh of Police Lines, Hisar. During investigation conducted by Baljit Singh it transpired that the death of the deceased Devender and Rajesh was due to rash and negligent driving of the driver but accused Rajbir was not driving dumper vehicle but the same was being driven by Ravinder Kumar alias Gobinda (respondent No.8).

He, however, was not arrayed as an accused as he was not having a valid driving licence. The complainant Udeybir and Ravinder Kumar @ Gobinda (respondent No.8) in connivance with each other arrayed Rajbir as an accused as he had a valid driving licence. Thereafter, the facts were also verified by Sunil Dalal and Tejbir Singh, Deputy Superintendents of Police (City), Hisar who also submitted their reports that the death was due to rash and negligent driving. Rajbir, however, was not driving the dumper in question at the time of accident. The same in fact was being driven by Ravinder Kumar alias Gobinda (respondent No.8). DSP Tejbir Singh in his report dated 03.05.2007 has recommended that the case be registered against Ravinder Kumar for the offences under Sections 279 and 304-A IPC and action under Section 182 I.P.C. be taken against Udeybir-complainant. The matter regarding taking further action in the matter as suggested by the Deputy Superintendent of Police (City) Hisar is under process. It is submitted that the case is one of a motor vehicle accident and no murder had taken place. Therefore, the case has been registered for the offences under Sections 279 and 304-A IPC only and there is no evidence on the file to prove even prima facie a case for the offences under Section 302 IPC against the accused. The allegations of conducting a partial investigation by taking huge amount have been denied. It is submitted that both the deceased died in a motor vehicle accident on account of rash and negligent driving of Ravinder Kumar @ Gobinda (respondent No.8). However, in order to shield the real

accused i.e. Ravinder Kumar @ Gobinda (respondent No.8), he was not named as an accused because he did not have a valid driving licence.

Learned counsel for the petitioner has submitted that a false FIR has been registered which is liable to be quashed and the FIR as disclosed by him is liable to be registered. In any case, it is submitted that registration of a second FIR in respect of the same occurrence is not barred. He has placed strong reliance on the case of ***Mukeem Ullah & Ors. v. State of U.P. & Ors.,*** *2006(3) Criminal Court Cases 527 (Allahabad) (DB).* He has also referred to the case of ***Gurmej Kaur v. State of Punjab,*** *2002(2) All India Criminal Law Reporter 83 (Punjab & Haryana)* wherein it has been held that when allegations in report show commission of a cognizable offence, police cannot be heard to say that they have enquired into matter and found it to be false and, therefore, FIR was not registered. This was held to be against the provisions of Section 154 Cr.P.C. It is submitted that it is only after registration of a case that investigation can be carried out. In support of this, learned counsel cites ***Samir Sett v. State of West Bengal & Ors,*** *2000(2) All India Criminal Law Reporter 616 (DB), (Calcutta).* A further reference has been made to the case of ***Parkash Singh Badal and Anr. V. State of Punjab and Ors,*** *2007(1) RCR (Criminal) 1 (Supremem Court)* to contend that where information disclosing the commission of a cognizable offence is laid with officer incharge of the Police Station, the Police Officer has a statutory duty to register a case and reasonableness or credibility of the said information is not a

condition precedent for registration of a case.

In response learned counsel appearing for the State has submitted that FIR in the case (i.e. case FIR No.145 dated 24.07.2006) has been registered on the statement of Udeybir-complainant for the offences under Sections 279 and 304-A IPC at Police Station Adampur. It is submitted that the matter has been inquired into on three occasions and twice by DSPs. However, it was found to be a case of an accident only being made out.

I have given my thoughtful consideration to the contentions of the learned Counsel appearing for the parties and also perused the record. It may be noticed that FIR No.145 dated 24.07.2006 (Annexure P-1) was registered at Police Station Adampur for the offences under Section 279 and 304-A IPC. The said FIR was registered on the statement of Udeybir Singh. It is stated by him that he was resident of Kanwari, Thana Sadar Hansi and was doing the work of farming. On 23.07.2006, he had come to meet his nephew Devender Singh son of Ran Singh resident of village Kanwari. During the night he stayed with Devender where the pool was being made for Sidhmukh Nehar (canal). On the day of the occurrence at about 4.00 a.m. when he got up and went to urinate towards canal, he saw that Rajbir son of Hawa Singh of his village Kanwari was reversing the dumper No. HR 39A-4466. At that time his nephew Devender son of Ran Singh along with Rajesh son of Mehar Singh alias Lilu were sleeping together on the ground. The rear tyre of the dumper went over

Rajesh and Devender. Due to this the head of Rajesh was crushed badly and that of his nephew Devender was also crushed and both of them died at the spot. The dumper was driven by Rajbir and he by not concentrating while reversing, had done a rash and a negligent act which resulted in death of Devender and Rajesh. He telephoned Satyawan son of Khushi Ram brother of Mehar Singh, Vinod son of Mehar Singh and Nand Lal son of Jug Lal and called them at the spot. He was going to the police station for reporting the matter when the Police met him near Sishwal. On the basis of the above-said statement the investigations were conducted. The petitioners, however, apprehend that in fact their sons have been crushed to death deliberately and intentionally and a murder case is being converted to a case of a simple accident. It is submitted that the cause of the murder is that respondents No.5 to 8 had got a girl for enjoying themselves, which was objected to by the sons of the petitioners. On account of the objection that was raised, the sons of the petitioners have been killed. The Police, however, it is stated, are not properly investigating the matter. A reference to the Medico Legal Report dated 24.07.2006 (Annexure P4 and P5) would show that the information furnished by the Police is that the occurrence is due to accident in respect of Rajesh Kumar. The information in respect of Devender Kumar, given by Police is that the accident on account of the tyre of the dumper being run over the body. The Doctor in both the cases opined that the cause of death in his opinion was due to injury on the vital organ (brain) which was

sufficient to cause death in the ordinary course of life. All injuries mentioned were ante mortem in nature.

Learned counsel for the petitioners has laid considerable emphasis on the fact that the police has recorded that Rajbir was involved in the occurrence whereas Ravinder Kumar @ Gobinda (respondent No.8) who is the real culprit was not involved as the latter did not have a valid licence. It is submitted that in fact Ravinder Kumar @ Gobinda (respondent No.8) has a valid driving licence, which is placed on record as Annexure P-23. In this regard, it is submitted by the learned State counsel that Rajbir was named as an accused as he had a valid licence and at that time, the complainant had apprehended that Ravinder Kumar @ Gobinda (respondent No.8) did not have a valid licence. However, in fact the Challan is being filed against Ravinder Kumar @ Gobinda (respondent No.8) only and not against Rajbir. Even otherwise, complainant Udeybir is being proceeded against under Section 182 IPC for giving false information in this regard.

The contention of the learned counsel for the petitioner that two FIRs can be registered in respect of the same occurrence is not tenable. In **Mukeem Ullah & Ors v. State of U.P. & Ors** (Supra) referred to by the learned counsel for the petitioner, the second FIR was lodged after three days of the first FIR. It was lodged by different persons against four new accused persons by giving rival or different versions. It was held that second FIR cannot be quashed by invoking

Section 162 Cr.P.C. It was also observed that there cannot be two FIRs against the same accused in respect of the same case, however, when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. There was no question of double jeopardy and second FIR was not liable to be quashed. Therefore, it was a case where quashing of second FIR was sought and it is not that where a different version is given in respect of an occurrence, FIR is to be registered.

In ***T.T. Antony v. State of Kerala (SC),*** *(2001) 6 SCC 181,* it was held by the Supreme Court there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Only information about commission of a cognizable offence which is first entered in the Station House Dairy by the Officer in charge of the Police Station can be regarded as FIR under Section 154 Cr.P.C. All such subsequent informations would be covered by Section 162 Cr.P.C. Officer in charge of the Police Station has to investigate not merely the cognizable offences reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided under Section 173 Cr.P.C. It was further held that even if after conclusion of the investigation filing of the FIR and submission of report under Section 173 (2) Cr.P.C., the Officer in charge

of Police Station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the Court and forward the further evidence, if any collected, with further report or reports under Section 173(8) Cr.P.C.. Therefore, evidently in respect of an occurrence only one FIR is to be registered and further investigation and inquiry is to be conducted in the FIR that has been registered. Besides, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Cr.P.C. Therefore, the FIR having been registered in the present case on the statement of Udeybir-complainant, registration of another FIR in respect of the same occurrence is wholly unnecessary. In the present case, as has already been noticed the Police has investigated the matter with regard to the version given by the petitioners. However, the petitioners are dissatisfied with the further investigations. Even if that be so, it is not the requirement of law to register another FIR as regards the version set up by the petitioners. Even otherwise the Police on receipt of information regarding commission of a cognizable offence is to register a FIR. However, this Court in exercise of its inherent jurisdiction is normally not to issue directions for registration of FIR.

In view of the aforesaid position, the judgments referred to by the learned counsel for the petitioners in the case of

Gurmeet Kaur v. State of Punjab (P & H) *(Supra)* and that of the Calcutta High Court in ***Samir Sett v. State of West Bengal & Ors*** (Supra) and in ***Parkash Singh Badal and Anr. v. State of Punjab and Ors (SC)*** (Supra) wherein it has been held that information disclosing cognizable offence a FIR has to be registered and it is statutory duty to register the case, are inapplicable in the facts and circumstances of the present case. It is not in dispute that the Police authorities on receipt of information disclosing the commission of a cognizable offence are required to register a FIR. However, the said situation has not arisen in the present case as a FIR in respect of the occurrence has already been registered and thereafter the matter has been investigated also. In case, the petitioner is still aggrieved against the same, he cannot seek for registration of another FIR.

The Supreme Court in **Hari Singh v. State of U.P.,** (2006) 5 SCC 733 considered a case where a writ petition was filed under Article 32 of the Constitution of India for a direction to conduct enquiry by the Central Bureau of Investigation ('CBI' for short) with respect to the murder of one Yashvir Singh son of the petitioner in the said case. The allegation was that though the First Information Report had been lodged by the Police to the effect that the said Yashvir Singh had been murdered and he had not committed suicide but because of the pressure of some influential people, the police had not taken any positive steps. On the contrary the petitioner was being harassed and threatened by certain persons. It was noticed that Yashvir Singh-

deceased in the said case was posted as Additional Commissioner of Gorakhpur, Uttar Pradesh and was found dead in his official residence on 19.01.2006. The petitioner therein made a grievance that the police officials in collusion with some relatives and more particularly the in-laws of the deceased Yashvir Singh were projecting the case as one of suicide. It was stated that the petitioner therein had made several representations to various authorities, but without any avail. It was pointed out that the Superintendent of Police had directed the Officer in charge of the Police Station concerned to inquire into the matter in view of the allegations made by the petitioner therein. However, it was the grievance of the said petitioner therein that no action had been taken purportedly on the basis of pressure exercised by some influential people who were inimical to the deceased though they are related to him. The Hon'ble Supreme Court after noticing the provisions under Sections 154 and 156 Cr.P.C. held that when an information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 Cr.P.C. file a complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided by the provisions of Chapter XV Cr.P.C. In case, the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII Cr.P.C. and to submit a report. However, if he, finds that the complaint does not disclose any

offence to take further action, he is empowered to dismiss the complaint under Section 203 Cr.P.C. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process in this regard. These aspects had been highlighted by the Hon'ble Supreme Court in ***All India Institute of Medical Sciences Employees' Union v. Union of India,*** *(1996) 11 SCC 582* and also in ***Gangadhar Janardan Mhatra v. State of Maharashtra*** *(2004) 7 SCC 768* and ***Minu Kumari v. State of Bihar,*** *(2006) 4 SCC 359*.

In the present case as in **Hari Singh v. State of U.P.** (Supra), the grievances of the petitioners are that there has been inaction on the part of police and the investigation is not being properly carried out. It is submitted that the sons of the petitioners have been killed, however, real culprits due to influence are not being brought to book and a case of murder is being converted to one of an accident. Following the ratio in the case of **Hari Singh v. State of U.P.** (Supra), it may be noticed that the petitioners have a remedy to file a complaint under Section 200 Cr.P.C. before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate would be required to enquire into the complaint as provided by the provisions of Chapter XV Cr.P.C. and he can also direct the police concerned to investigate into the offence under Chapter XII Cr.P.C. However, if in the opinion of the Magistrate, no ground is made out for further proceedings, the complaint is liable to be dismissed in terms of

Section 203 Cr.P.C. In any case he is not liable to issue directions for the registration of a second FIR when one has already been registered in view of the observations of the Supreme Court in **T.T. Antony v. State of Kerala and Ors.** (Supra).

In view of the above, there is no merit in this petition and the same is accordingly dismissed. However, the petitioners would be at liberty to avail the remedies as referred to above in accordance with the judgment of the Hon'ble Supreme Court in **Hari Singh v. State of U.P** (Supra).

(S.S. SARON)
JUDGE

23.08.2007
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